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**FEB 28 2006**

**OFFICE OF PETITIONS**

In re Application of Walker et al. :  
Application No. 09/223,901 :  
Filing Date: December 31, 1998 :  
Attorney Docket No. 98-084 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed December 5, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

The above-identified application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 1.17(c)) within the time period provided in 37 CFR 1.192(a). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal mailed April 13, 2005, and no extensions of time under the provisions of 37 CFR 1.136(b) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the above-identified application became abandoned as of midnight on July 13, 2005. See MPEP 1215.04.

A grantable petition under 37 CFR 1.137(b) must be accompanied by a terminal disclaimer in certain situations.

Per MPEP 711.03(c) under "G. Terminal Disclaimer Requirement,"

[A] terminal disclaimer (and fee) is ... required for a utility or plant application filed on or after June 8, 1995, but before May 29, 2000, where the application became abandoned (1) during appeal, (2) during interference, or (3) while under a secrecy order. The reason being that utility and plant patents issuing on applications filed on or after June 8, 1995, but before May 29, 2000, are eligible for the patent term extension under former 35 U.S.C. 154(b) (as a result of the Uruguay Round Agreements Act (URAA)). See 35 U.S.C. 154(b) (1999); see also 37 CFR 1.701. If such an application is abandoned (1) during appeal, (2) during interference, or (3) while under a secrecy order, the patentee of a patent issuing from such an application is eligible for patent term extension for the entire period of abandonment. The requirement for a terminal disclaimer for these situations will make certain that any patent term extension obtained for the period of abandonment while the application is under appeal, interference, or a secrecy order will be dedicated to the public. For utility and plant applications filed on or after May 29, 2000, a terminal disclaimer (and fee) is not required since the period of abandonment is reduced from the patent term adjustment pursuant to 37 CFR 1.704.

The instant application was filed between June 8, 1995, and May 29, 2000. The instant application became abandoned during appeal. Therefore, a terminal disclaimer must be filed. A blank terminal disclaimer form is attached.

The Office notes a non-final Office action was mailed on February 27, 2006. However, the application is abandoned. Therefore, the February 27, 2006, Office action is vacated.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

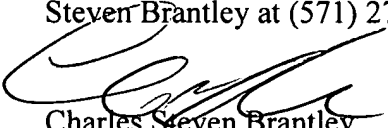
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300  
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions

Attached: PTO/SB/63 - Terminal Disclaimer Form

<b>TERMINAL DISCLAIMER TO ACCOMPANY PETITION</b>	<b>Docket Number (Optional)</b>				
<p>In re Application of:</p> <p>Name:</p> <p>Application Number:</p> <p>Filed:</p> <p>For:</p> <p>The owner*, _____ of _____ percent interest in the above-identified application hereby disclaims a terminal part of the term of any patent granted the above-identified application equivalent to: (1) if the above-identified application is a design application, the period of abandonment of the above-identified application, and (2) if the above-identified application is a utility or plant application, the lesser of: (a) the period of abandonment of the application; or (b) the period extending beyond twenty years from the date on which the above-identified application was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed. This disclaimer also applies to any patent granted on a utility or plant application filed before June 8, 1995, or a design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. This disclaimer is binding upon the grantee, and its successors or assigns.</p> <p>Check either box 1 or 2 below, if appropriate.</p> <p>1. <input type="checkbox"/> For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.</p> <p>2. <input type="checkbox"/> The undersigned is an attorney or agent of record. Registration Number _____</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; text-align: center; border-top: 1px solid black; border-bottom: 1px solid black;">Signature</td> <td style="width: 50%; text-align: center; border-top: 1px solid black; border-bottom: 1px solid black;">Date</td> </tr> <tr> <td style="width: 50%; text-align: center; border-top: 1px solid black; border-bottom: 1px solid black;">Typed or Printed Name</td> <td style="width: 50%; text-align: center; border-top: 1px solid black; border-bottom: 1px solid black;">Telephone Number</td> </tr> </table> <p><input type="checkbox"/> Terminal disclaimer fee under 37 CFR 1.20(d) included.</p> <p><b>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</b></p> <p>* Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP § 324.</p>		Signature	Date	Typed or Printed Name	Telephone Number
Signature	Date				
Typed or Printed Name	Telephone Number				

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

*If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*